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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Interconnection and Resale Obligations
Pertaining to Commercial Mobile Radio Services

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CC Docket No. 94-54

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**REPLY COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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REPLY COMMENTS OF

The Personal Communications Industry Association ("PCIA") respectfully

¹ FCC 95-149 (Apr. 20, 1995) ("*Notice*").

I. INTRODUCTION AND SUMMARY

In its *Notice*, the Commission tentatively decided not to impose general interconnection or roaming obligations on CMRS providers, but proposed to require unrestricted resale absent a demonstration of technical or economic infeasibility. The Commission also tentatively concluded that the requirement to provide resale capacity to facilities-based competitors should be terminated at some point during or after facilities build-out and that mandatory switched-based resale is unwarranted.

PCIA strongly endorsed many of the Commission's proposals, noting that the CMRS market is already highly competitive and no single provider is capable of exerting market power. In such an environment, federal or state regulatory intervention might well interfere with the technological and market evolution of CMRS products and harm consumers. PCIA also supported mandatory CMRS resale where it is economically and technically feasible and will not produce adverse consequences. Specifically, PCIA demonstrated that mandatory resale is unwarranted for paging due to the multitude of existing facilities-based and resale competitors, and that SMR resale is technically insupportable. In addition, resale should be optional during the initial operations of new PCS licensees and after a facilities-based competitor is fully operational. Finally, switch-based resale raises serious economic and technical concerns and likely will impede rather than promote competition.

The record supports these positions:

Interconnection and Roaming. Virtually no commenter contended that mandatory interconnection and roaming obligations are in the public interest. Instead, commenters from every segment of the CMRS industry explained that, because the CMRS market is highly competitive, regulatory intervention is unwarranted and most likely would be counter-productive. Businesses are far better at responding to the demands of their customers than regulators are at anticipating those demands, and market forces will assure that roaming and interconnection are provided in an appropriate manner. Any problems that arise can be handled through enforcement proceedings.

Resale. Most commenters agreed that resale of broadband CMRS is generally pro-competitive, and therefore in the public interest. However, the record reflects concern that mandatory resale to fully operational facilities-based competitors would discourage construction of CMRS infrastructure. In addition, there is broad consensus that mandatory resale of paging,² SMR, and air-to-ground services is both unnecessary and, in the case of the latter two offerings, technically infeasible. Finally, there is strong agreement that switch-based resale is unnecessary in the highly competitive CMRS market, would inhibit the construction of CMRS infrastructure, is technologically infeasible, and would create unwarranted burdens.

² PCIA uses the term "paging" throughout these reply comments to include both traditional paging and new narrowband PCS services.

II. MANDATORY CMRS INTERCONNECTION IS UNNECESSARY, GIVEN THE INCREASINGLY COMPETITIVE NATURE OF THE CMRS MARKET

The CMRS industry is in virtually unanimous agreement that mandatory interconnection is unnecessary and would be counter-productive. As stated by AirTouch, in the competitive CMRS market, market forces and negotiations will result in more efficient, beneficial, and innovative agreements than any rigid regulatory framework imposed by the Commission.² Further, many parties agree with PCIA that LEC-mediated interconnection will prevent the use of market power by any one provider to deny reasonable interconnection,³ and that mandated interconnection may force all providers down to the lowest common technological denominator in order to allow for inter-provider compatibility.⁴ Numerous commenters also point out that there is no evidence that CMRS producers are unreasonably denying interconnection, and that any such behavior can be dealt with on an individual basis using the complaint

² AirTouch Comments at 2-3. *See also* American Mobile Telecommunications Ass'n Comments at 2, 4; Ameritech Comments at 2-3; AT&T Comments at 3-5; Bell Atlantic Mobile Systems Comments at 5; Comcast Cellular Communications Comments at 1, 5, 14-15; Frontier Cellular Holdings Comments at 4-5; GTE Comments at 4-7; NYNEX Comments at 4.

³ AirTouch Comments at 3, 9, 7-8; American Mobile Telecommunications Ass'n Comments at 3-4; CTIA Comments at 7-8; Geotek Comments at 2; GTE Comments at 7.

⁴ AT&T Comments at 16-17. *See also* CTIA Comments at 13-15; GTE Comments at 7-8.

process.⁵ Finally, there is widespread support for preemption of state interconnection requirements based on the recognition that uniform nationwide regulation is a necessary precondition to the smooth functioning of the CMRS industry,⁶ and that a national wireless infrastructure is fundamentally incompatible with a multitude of varying state regulations.⁷

In contrast, the General Services Administration ("GSA") contends that mandatory interconnection will foster the development of the National Information Infrastructure ("NII").⁸ Although PCIA enthusiastically supports the development of the NII, it does not agree with GSA that mandatory interconnection is needed to promote NII-related goals in a robustly competitive market. Indeed, unnecessary regulatory intervention could impair progress toward a "network of networks" by effectively compelling deployment of inferior technologies that do not permit satisfaction of consumer demand.

⁵ Alltel Mobile Communications Comments at 2-3; Ameritech Comments at 3-4; Bell Atlantic Comments at 6; CTIA Comments at 13-15; GTE Comments at 8-9.

⁶ AirTouch Comments at 24-26; Ameritech Comments at 2; CTIA Comments at 16; GTE Comments at 11.

⁷ AT&T Comments at 21; Bell Atlantic Comments at 6-7, 9.

⁸ GSA Comments at 3-5.

III. THE MARKETPLACE CAN BE RELIED UPON TO ASSURE THAT ROAMING DEMAND IS MET

Most commenters agree with PCIA's assessment that CMRS providers are capable of negotiating more efficient roaming agreements than would be produced by regulatory intervention. Several parties noted that cellular roaming agreements have been driven by market forces rather than regulatory intervention, and that this track record supports regulatory forbearance.⁹ Indeed, the wisdom of such an approach is confirmed because mandatory roaming could have a deleterious effect on the quality of future offerings.¹⁰ For example, PCS Primeco explained that mandatory cross-service roaming would prevent the quality of PCS technology from ever superseding that of cellular systems, absent a major cellular upgrade.¹¹ Accordingly, given the lack of evidence that PCS providers are unable to negotiate roaming agreements after undertaking good faith efforts to do so, the FCC should leave the negotiation of roaming agreements to the business judgment of CMRS providers. Any specific problems can be dealt with through enforcement proceedings.

⁹ AirTouch Comments at 10-11; Alltel Comments at 3; American Mobile Telecommunications Ass'n Comments at 6; Ameritech Comments at 5; AT&T Comments at 4, 23; Bell Atlantic Comments at 8; CTIA Comments at 19; Frontier Cellular Holdings Comments at 5-6; GTE Comments at 12-14.

¹⁰ Bell Atlantic Comments at 8.

¹¹ PCS Primeco Comments at 7-8.

IV. QUALIFIED RESALE OBLIGATIONS SHOULD BE EXTENDED TO BROADBAND CMRS PROVIDERS BUT NOT TO PAGING, OR AIR-TO-GROUND SERVICE SMR PROVIDERS

Most commenters joined PCIA in favoring CMRS resale as being both pro-competitive and not unduly burdensome.¹² Nonetheless, there is also broad agreement that any resale obligations must be qualified in several important respects.

First, new CMRS systems must be permitted to utilize a resale moratorium in order to get their system up, running, and stabilized under real-world operating conditions.¹³ Many of these systems will rely on new technologies that must be introduced and tested in a well-planned, controlled manner. PCIA recommends that the Commission allow new PCS licensee a period of one year after construction in which to launch their operations *before* facing resale obligations.¹⁴

Second, the obligation to resell broadband CMRS capacity to facilities-based competitors must "sunset" at some point after the competitor has become fully operational.¹⁵ Such a limitation is necessary to encourage the full construction of CMRS infrastructure.

¹² AirTouch Comments at 15-17; Ameritech Comments at 7; GSA Comments at 6-7.

¹³ APC Comments at 9-10, PCIA Comments at 21.

¹⁴ PCIA Comments at 21.

¹⁵ AT&T Comments at 4, 5, 28; Bell Atlantic Comments at 10-11; GTE Comments at 16-17, 22-23. *See also* AirTouch Comments at 15-17; Ameritech Comments at 7.

Third, paging, SMR and air-to-ground services should not be subject to mandatory resale obligations. With respect to paging, the industry is already highly competitive, as the Commission has found.¹⁶ Numerous parties opposed mandatory resale based on the vigorous existing facilities-based and resale competition.¹⁷ The record confirms that price discrimination does not exist at the wholesale or retail levels, rates have been decreasing rapidly, and new competitors are entering the market due to the availability of spectrum and lack of entry barriers.¹⁸ Moreover, new services are being brought to market regularly, evidencing highly beneficial technical innovation and service diversity.¹⁹ Accordingly, all the benefits the Commission could hope to achieve through mandatory resale already exist in the paging market.²⁰ In contrast, mandatory resale would adversely affect service quality and efficient spectrum use by making it difficult for carriers to project facility needs and capacity.²¹

Many of these same considerations hold true for the SMR industry, which, in addition to being highly competitive, also has technical characteristics that render resale

¹⁶ CMRS Second Report and Order, 9 FCC Rcd 1411, 1468 (1994).

¹⁷ AirTouch Comments at 17; AMTA Comments at 9; AT&T Comments at 26-28; BellSouth Comments at 7; Paging Network Comments at 3-6.

¹⁸ AirTouch Comments at 17-19; Mobilemedia Comments at 6; Paging Network Comments at 4-6; *see also* CMRS Second Report and Order, 9 FCC Rcd at 1468.

¹⁹ Paging Network Comments at 15.

²⁰ AirTouch Comments at 17-18; Paging Network Comments at 9-10.

²¹ Comments of Paging Network at 12-13.

inconsistent with good service.²² The technical obstacles to SMR resale are twofold. First, SMR operators must carefully manage their networks in order to provide optimal service to their customers. For example, assignment of "home" channels (in LTR format systems) and control channels (in Motorola format systems), individualized programming of group identification codes, and the use of specific interconnect channels must be carefully monitored by the system operator. Second, it is highly labor intensive to add new users to SMR systems, as each radio must be individually tuned in accordance with the system's technical parameters. Mandatory SMR resale also would discourage the construction of innovative networks²³ and threaten the ability to migrate customers from analog to digital equipment.²⁴

Finally, GTE and In-Flight Phone Corporation show that air-to-ground offerings should not be subject to resale obligations because of the technical incompatibility of different equipment types, the limited spectrum capacity, and the competitiveness of the air-to-ground market.²⁵ Accordingly, as with paging and SMR services, the Commission should not require resale of air-to-ground offerings.

²² See PCIA Comments at 15-20.

²³ Geotek Comments at 7-9.

²⁴ Nextel Comments at 15. Finally, a resale obligation would require SMR operators to disclose their fleet ID codes to resellers. The disclosure of such codes might lead to the manufacture of "pirated" units for which the SMR operator will not be compensated. Therefore, it is unfair to require SMR providers to disclose such proprietary information to resellers.

²⁵ GTE Comments at 18-22; In-Flight Phone Corporation Comments at 5-8.

A few commenters argue that regulatory parity requires *all* CMRS, including SMR and paging, to be subject to a resale obligation.²⁶ Regulatory parity, however, only requires parallel treatment of "substantially similar services." It does not compel the Commission to disregard the adverse practical effects of uniform treatment where such consistency would be antithetical to the public interest, and the Commission has distinguished its regulatory treatment of different CMRS services in the past where warranted. The market conditions, economic and technical distinctions noted with respect to paging, SMR, and air-to-ground plainly render these offerings dissimilar to broadband CMRS for purposes of considering whether to impose a resale obligation, and justify disparate treatment.²⁷

V. SWITCH-BASED CMRS RESALE IS UNNECESSARY AND COUNTER-PRODUCTIVE

The CMRS industry was in virtual unanimous agreement that the NCRA/Comtech switch-based resale proposal would not advance competition and could harm providers and customers of CMRS services. In this regard, several commenters supported PCIA's contentions that the CMRS market is already highly competitive,²⁸

²⁶ Ameritech Comments at 6; Bell Atlantic Comments at 9-10; Cellnet of Ohio Comments at 4; CTIA Comments at 22-23.

²⁷ The broadband CMRS obligation should apply to the service, not the provider. That is, a company offering both broadband CMRS and paging or SMR, for example, should face a resale requirement only for its broadband CMRS service.

²⁸ Alltel Comments at 5; AT&T Comments at 5, 28; GTE Comments at 22-23.

switch-based resale will produce technological problems and inhibit the construction of CMRS infrastructure,²⁹ expanded infrastructure is a better means of increasing CMRS competition,³⁰ and the costs of unbundling networks will be significant and unnecessary.³¹ Such unbundling also would entail fully distributed cost-based pricing, which limits the ability of carriers to respond to changing market conditions through price changes.³² Finally, commenters noted that switch-based resale would produce a free-rider problem by rewarding entities that did not invest in PCS auctions or construct other CMRS infrastructure,³³ and would allow resellers to exploit sensitive information about a competing carrier's network.³⁴

In contrast to this substantial and well-documented opposition, the proponents of switch-based resale offer only speculative assertions that it will increase competition and produce a greater variety of service offerings.³⁵ These assertions cannot

²⁹ AirTouch Comments at 19-23; APC Comments at 11-12; CTIA Comments at 27; Comcast Comments at 29-30.

³⁰ CTIA Comments at 37.

³¹ AirTouch Comments at 19-23; Bell Atlantic Comments at 12; CTIA Comments at 37-39.

³² AirTouch Comments at 19-23; AT&T Comments at 5, 28-30; CTIA Comments at 31-33.

³³ AirTouch Comments at 19-23; Alltel Comments at 5; CTIA Comments at 34-35; Comcast Comments at 27-29; Sprint Telecommunications Venture Comments at 11.

³⁴ AirTouch Comments at 19-23.

³⁵ Cellular Service, Inc. and Comtech Mobile Telephone Co. Comments at 1-3, 8; GSA Comments at 7; National Wireless Resellers Association Comments at 6-7.

withstand scrutiny. Switch-based resale would not appreciably increase competition in a market with two cellular licensees, three to five PCS carriers, ESMRs, and other CMRS providers. It would, however, create technical problems and hamstring the ability of licensees to compete effectively and realize a return on their substantial investment. Therefore, the Commission should adopt its tentative conclusion not to mandate switch-based resale.³⁶

VI. CONCLUSION

The opening comments establish beyond dispute that market forces will assure that customers receive the interconnection and roaming services they desire. In the competitive CMRS industry, market-oriented solutions to interconnection and roaming issues plainly will be more efficient than regulatory intervention. Any individualized problems that develop can be dealt with through enforcement proceedings.


With respect to resale, there is similarly universal consensus that a general CMRS resale obligation is warranted, if properly circumscribed. Specifically, paging, SMR, and air-to-ground services should not be subject to mandatory resale, licensees should be able to deny resale to facilities-based competitors after they are fully operational, and new PCS licensees should be permitted to limit resale during an initial

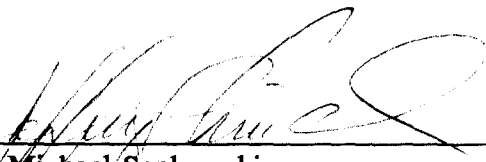
³⁶ Although a number of resellers favor including number portability within this proceeding (*see, e.g.*, Mobile One Comments at 1-2; National Wireless Resellers Association Comments at 18-19), most parties support PCIA's suggestion that number portability be considered in a separate proceeding. AT&T Comments at 28 n.60; CTIA Comments at 25; Southwestern Bell Mobile Systems Comments at 21-22.

period while they assure that their networks operate properly under real-world conditions. Finally, the record overwhelmingly demonstrates that switch-based resale raises serious economic and technical issues and is likely to hinder rather than promote competition.

Respectfully submitted,

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July 14, 1995

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 1995, I caused copies of the foregoing "Reply Comments of the Personal Communications Industry Association" to be hand-delivered to the following:

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